

Legal Updates & News

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NYSE Eliminates Press Release Requirement and Revises Notification Standards for Listed Companies

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Effective May 7, 2009, companies listed on the New York Stock Exchange ("NYSE") are no longer required to file a separate press release to comply with Section 202.05 of the NYSE's Listed Company Manual, which requires that NYSE-listed companies immediately release any news or information that might reasonably be expected to materially affect the market for its securities. Previously, Section 202.06 of the Listed Company Manual required listed companies to comply with this immediate release policy by issuing a press release.

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As a result of the rule change, NYSE-listed companies may now satisfy the immediate release policy by disseminating the information by any Regulation FD-compliant method. Acceptable dissemination methods include filing or furnishing a Current Report on Form 8-K with the SEC, as well as conference calls, press releases, and webcasts, so long as the public is provided adequate notice and granted access. Any other method of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public will also satisfy Regulation FD and the new NYSE rule. This also includes, in certain circumstances described in recent SEC guidance on Regulation FD, posting the information on the company's website.^[1]

The rule change will eliminate confusion that the NYSE noted regarding the press release requirement. In particular, listed companies sometimes assumed that the filing of a Current Report on Form 8-K was sufficient to comply with the NYSE's rules. According to the NYSE, other companies expressed the view that a press release is redundant when the company is otherwise meeting its Regulation FD requirements. In the materials related to the rule change proposal, the NYSE stated that, while it continues to believe that there are benefits to the market and investors generally if companies issue press releases when disclosing material information, it is appropriate to harmonize the NYSE's requirements with those of the NASDAQ (which are similar) and Regulation FD, to eliminate the confusion inherent in having different regimes applied by the two largest listing exchanges and the SEC. Notwithstanding the rule change, the NYSE still encourages NYSE-listed companies to use press releases as a means of disseminating material information.

The NYSE also made related revisions and an important clarification to Section 202.06(B) of the Listed Companies Manual. Section 202.06(B) previously provided that when the announcement of news of a material event or a statement dealing with a rumor which calls for immediate release is made shortly before the opening or during market hours (9:30 a.m. to 5:00 p.m., New York time), it is “recommended” that the company’s NYSE representative be notified by telephone at least 10 minutes prior to release of the announcement. This timely notification enables the NYSE to consider whether trading in the security should be temporarily halted. Section 202.06(B) was amended to clarify that notification of the NYSE is a requirement and not just a recommendation. In addition, Section 202.06(B) was amended to require that when providing this notice to the NYSE, a listed company must disclose the substance of the announcement and the Regulation FD-compliant method it intends to use to disseminate the news; provide the NYSE with the information necessary to locate the information upon publication; and when the announcement is in written form, to provide the text of the proposed announcement to the NYSE by email at the time of notification.

Footnotes

[1] See Release No. 34-58288 (Aug. 1, 2008).